



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Dan Pearson
Executive Director
Texas Natural Resource Conservation
Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-1521

Dear Mr. Pearson:

Mr. Rodman C. Johnson, formerly of the Texas Air Control Board, previously asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Mr. Johnson's request was assigned ID# 21022. A copy of the first page of Mr. Johnson's letter to this office is enclosed for your reference. On July 9, 1993, we asked the Air Control Board to submit copies of the documents that were the subject of the open records request. A recent review of our records revealed that our office never received those documents.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information requested from the Air Control Board, this office is unable to evaluate the exceptions previously raised. Consequently, because we have no basis for concluding otherwise, we find that the requested information is presumed to be public. Open Records Decision No. 195 (1978).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the Texas Natural Resource Conservation Commission must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). For your convenience, we have attached a list of the types of confidential information that typically must be withheld from the public. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RLP/rho

Ref.: ID# 21022

Enclosures: First page of July 2, 1993 letter
Confidentiality list

cc: Ms. Greta Boultinghouse
Ms. Phyllis Glazer
M.O.S.E.S.
15115 FM Road 16E
Winona, Texas 75792
(w/Confidentiality list)